

ASSEMBLY BILL

No. 1402

Introduced by Assembly Member Travis Allen

February 17, 2017

An act to amend Sections 647 and 653.22 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1402, as introduced, Travis Allen. Prostitution: minors.

Existing law makes it a misdemeanor for an individual to solicit, agree to engage in, or engage in, an act of prostitution with the intent to receive compensation, money, or anything of value from another person, as specified, or an act of prostitution with an adult or a minor in exchange for the individual providing compensation, money, or anything of value to the other person, as specified. Existing law makes it unlawful for a person to loiter in a public place with the intent to commit prostitution, as specified.

Existing law exempts a child under 18 years of age who is alleged to have engaged in prostitution or related offenses from being prosecuted for those offenses. Existing law authorizes a commercially exploited child under those circumstances to be adjudged a dependent child of the court and to be taken into temporary custody if the conditions allowing temporary custody without warrant are met.

This bill would instead make the prohibitions on prostitution and related offenses applicable to a person under 18 years of age. By expanding the application of those crimes to those persons, this bill would impose a state-mandated local program. The bill would also make a technical nonsubstantive change to one of those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 647 of the Penal Code is amended to
2 read:

3 ~~647. Except as provided in paragraph (5) of subdivision (b)~~
4 ~~and subdivision (f), every~~ A person who commits any of the
5 following acts is guilty of disorderly conduct, a misdemeanor:

6 (a) An individual who solicits anyone to engage in or who
7 engages in lewd or dissolute conduct in any public place or in any
8 place open to the public or exposed to public view.

9 (b) (1) An individual who solicits, or who agrees to engage in,
10 or who engages in, any act of prostitution with the intent to receive
11 compensation, money, or anything of value from another person.
12 An individual agrees to engage in an act of prostitution when, with
13 specific intent to so engage, he or she manifests an acceptance of
14 an offer or solicitation by another person to so engage, regardless
15 of whether the offer or solicitation was made by a person who also
16 possessed the specific intent to engage in an act of prostitution.

17 (2) An individual who solicits, or who agrees to engage in, or
18 who engages in, any act of prostitution with another person who
19 is 18 years of age or older in exchange for the individual providing
20 compensation, money, or anything of value to the other person.
21 An individual agrees to engage in an act of prostitution when, with
22 specific intent to so engage, he or she manifests an acceptance of
23 an offer or solicitation by another person who is 18 years of age
24 or older to so engage, regardless of whether the offer or solicitation
25 was made by a person who also possessed the specific intent to
26 engage in an act of prostitution.

27 (3) An individual who solicits, or who agrees to engage in, or
28 who engages in, any act of prostitution with another person who
29 is a minor in exchange for the individual providing compensation,
30 money, or anything of value to the minor. An individual agrees to

1 engage in an act of prostitution when, with specific intent to so
2 engage, he or she manifests an acceptance of an offer or solicitation
3 by someone who is a minor to so engage, regardless of whether
4 the offer or solicitation was made by a minor who also possessed
5 the specific intent to engage in an act of prostitution.

6 (4) A manifestation of acceptance of an offer or solicitation to
7 engage in an act of prostitution does not constitute a violation of
8 this subdivision unless some act, in addition to the manifestation
9 of acceptance, is done within this state in furtherance of the
10 commission of the act of prostitution by the person manifesting
11 an acceptance of an offer or solicitation to engage in that act. As
12 used in this subdivision, “prostitution” includes any lewd act
13 between persons for money or other consideration.

14 ~~(5) Notwithstanding paragraphs (1) to (3), inclusive, this~~
15 ~~subdivision does not apply to a child under 18 years of age who~~
16 ~~is alleged to have engaged in conduct to receive money or other~~
17 ~~consideration that would, if committed by an adult, violate this~~
18 ~~subdivision. A commercially exploited child under this paragraph~~
19 ~~may be adjudged a dependent child of the court pursuant to~~
20 ~~paragraph (2) of subdivision (b) of Section 300 of the Welfare and~~
21 ~~Institutions Code and may be taken into temporary custody~~
22 ~~pursuant to subdivision (a) of Section 305 of the Welfare and~~
23 ~~Institutions Code, if the conditions allowing temporary custody~~
24 ~~without warrant are met.~~

25 (c) Who accosts other persons in any public place or in any
26 place open to the public for the purpose of begging or soliciting
27 alms.

28 (d) Who loiters in or about any toilet open to the public for the
29 purpose of engaging in or soliciting any lewd or lascivious or any
30 unlawful act.

31 (e) Who lodges in any building, structure, vehicle, or place,
32 whether public or private, without the permission of the owner or
33 person entitled to the possession or in control of it.

34 (f) Who is found in any public place under the influence of
35 intoxicating liquor, any drug, controlled substance, toluene, or any
36 combination of any intoxicating liquor, drug, controlled substance,
37 or toluene, in a condition that he or she is unable to exercise care
38 for his or her own safety or the safety of others, or by reason of
39 his or her being under the influence of intoxicating liquor, any
40 drug, controlled substance, toluene, or any combination of any

1 intoxicating liquor, drug, or toluene, interferes with or obstructs
2 or prevents the free use of any street, sidewalk, or other public
3 way.

4 (g) If a person has violated subdivision (f), a peace officer, if
5 he or she is reasonably able to do so, shall place the person, or
6 cause him or her to be placed, in civil protective custody. The
7 person shall be taken to a facility, designated pursuant to Section
8 5170 of the Welfare and Institutions Code, for the 72-hour
9 treatment and evaluation of inebriates. A peace officer may place
10 a person in civil protective custody with that kind and degree of
11 force that would be lawful were he or she effecting an arrest for a
12 misdemeanor without a warrant. A person who has been placed
13 in civil protective custody shall not thereafter be subject to any
14 criminal prosecution or juvenile court proceeding based on the
15 facts giving rise to this placement. This subdivision does not apply
16 to the following persons:

17 (1) A person who is under the influence of any drug, or under
18 the combined influence of intoxicating liquor and any drug.

19 (2) A person who a peace officer has probable cause to believe
20 has committed any felony, or who has committed any misdemeanor
21 in addition to subdivision (f).

22 (3) A person who a peace officer in good faith believes will
23 attempt escape or will be unreasonably difficult for medical
24 personnel to control.

25 (h) Who loiters, prowls, or wanders upon the private property
26 of another, at any time, without visible or lawful business with the
27 owner or occupant. As used in this subdivision, "loiter" means to
28 delay or linger without a lawful purpose for being on the property
29 and for the purpose of committing a crime as opportunity may be
30 discovered.

31 (i) Who, while loitering, prowling, or wandering upon the private
32 property of another, at any time, peeks in the door or window of
33 any inhabited building or structure, without visible or lawful
34 business with the owner or occupant.

35 (j) (1) A person who looks through a hole or opening, into, or
36 otherwise views, by means of any instrumentality, including, but
37 not limited to, a periscope, telescope, binoculars, camera, motion
38 picture camera, camcorder, or mobile phone, the interior of a
39 bedroom, bathroom, changing room, fitting room, dressing room,
40 or tanning booth, or the interior of any other area in which the

1 occupant has a reasonable expectation of privacy, with the intent
2 to invade the privacy of a person or persons inside. This subdivision
3 does not apply to those areas of a private business used to count
4 currency or other negotiable instruments.

5 (2) A person who uses a concealed camcorder, motion picture
6 camera, or photographic camera of any type, to secretly videotape,
7 film, photograph, or record by electronic means, another,
8 identifiable person under or through the clothing being worn by
9 that other person, for the purpose of viewing the body of, or the
10 undergarments worn by, that other person, without the consent or
11 knowledge of that other person, with the intent to arouse, appeal
12 to, or gratify the lust, passions, or sexual desires of that person and
13 invade the privacy of that other person, under circumstances in
14 which the other person has a reasonable expectation of privacy.

15 (3) (A) A person who uses a concealed camcorder, motion
16 picture camera, or photographic camera of any type, to secretly
17 videotape, film, photograph, or record by electronic means, another,
18 identifiable person who may be in a state of full or partial undress,
19 for the purpose of viewing the body of, or the undergarments worn
20 by, that other person, without the consent or knowledge of that
21 other person, in the interior of a bedroom, bathroom, changing
22 room, fitting room, dressing room, or tanning booth, or the interior
23 of any other area in which that other person has a reasonable
24 expectation of privacy, with the intent to invade the privacy of that
25 other person.

26 (B) Neither of the following is a defense to the crime specified
27 in this paragraph:

28 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
29 employer, employee, or business partner or associate of the victim,
30 or an agent of any of these.

31 (ii) The victim was not in a state of full or partial undress.

32 (4) (A) A person who intentionally distributes the image of the
33 intimate body part or parts of another identifiable person, or an
34 image of the person depicted engaged in an act of sexual
35 intercourse, sodomy, oral copulation, sexual penetration, or an
36 image of masturbation by the person depicted or in which the
37 person depicted participates, under circumstances in which the
38 persons agree or understand that the image shall remain private,
39 the person distributing the image knows or should know that

1 distribution of the image will cause serious emotional distress, and
2 the person depicted suffers that distress.

3 (B) A person intentionally distributes an image described in
4 subparagraph (A) when he or she personally distributes the image,
5 or arranges, specifically requests, or intentionally causes another
6 person to distribute that image.

7 (C) As used in this paragraph, “intimate body part” means any
8 portion of the genitals, the anus and in the case of a female, also
9 includes any portion of the breasts below the top of the areola, that
10 is either uncovered or clearly visible through clothing.

11 (D) It shall not be a violation of this paragraph to distribute an
12 image described in subparagraph (A) if any of the following
13 applies:

14 (i) The distribution is made in the course of reporting an
15 unlawful activity.

16 (ii) The distribution is made in compliance with a subpoena or
17 other court order for use in a legal proceeding.

18 (iii) The distribution is made in the course of a lawful public
19 proceeding.

20 (5) This subdivision does not preclude punishment under any
21 section of law providing for greater punishment.

22 (k) In addition to any punishment prescribed by this section, a
23 court may suspend, for not more than 30 days, the privilege of the
24 person to operate a motor vehicle pursuant to Section 13201.5 of
25 the Vehicle Code for any violation of subdivision (b) that was
26 committed within 1,000 feet of a private residence and with the
27 use of a vehicle. In lieu of the suspension, the court may order a
28 person’s privilege to operate a motor vehicle restricted, for not
29 more than six months, to necessary travel to and from the person’s
30 place of employment or education. If driving a motor vehicle is
31 necessary to perform the duties of the person’s employment, the
32 court may also allow the person to drive in that person’s scope of
33 employment.

34 (l) (1) A second or subsequent violation of subdivision (j) is
35 punishable by imprisonment in a county jail not exceeding one
36 year, or by a fine not exceeding two thousand dollars (\$2,000), or
37 by both that fine and imprisonment.

38 (2) If the victim of a violation of subdivision (j) was a minor at
39 the time of the offense, the violation is punishable by imprisonment
40 in a county jail not exceeding one year, or by a fine not exceeding

1 two thousand dollars (\$2,000), or by both that fine and
2 imprisonment.

3 (m) (1) If a crime is committed in violation of subdivision (b)
4 and the person who was solicited was a minor at the time of the
5 offense, and if the defendant knew or should have known that the
6 person who was solicited was a minor at the time of the offense,
7 the violation is punishable by imprisonment in a county jail for
8 not less than two days and not more than one year, or by a fine not
9 exceeding ten thousand dollars (\$10,000), or by both that fine and
10 imprisonment.

11 (2) The court may, in unusual cases, when the interests of justice
12 are best served, reduce or eliminate the mandatory two days of
13 imprisonment in a county jail required by this subdivision. If the
14 court reduces or eliminates the mandatory two days' imprisonment,
15 the court shall specify the reason on the record.

16 SEC. 2. Section 653.22 of the Penal Code is amended to read:

17 653.22. (a) ~~(1) Except as specified in paragraph (2), it~~ *It* is
18 unlawful for any person to loiter in any public place with the intent
19 to commit prostitution. This intent is evidenced by acting in a
20 manner and under circumstances that openly demonstrate the
21 purpose of inducing, enticing, or soliciting prostitution, or
22 procuring another to commit prostitution.

23 ~~(2) Notwithstanding paragraph (1), this subdivision does not~~
24 ~~apply to a child under 18 years of age who is alleged to have~~
25 ~~engaged in conduct that would, if committed by an adult, violate~~
26 ~~this subdivision. A commercially exploited child under this~~
27 ~~paragraph may be adjudged a dependent child of the court pursuant~~
28 ~~to paragraph (2) of subdivision (b) of Section 300 of the Welfare~~
29 ~~and Institutions Code and may be taken into temporary custody~~
30 ~~pursuant to subdivision (a) of Section 305 of the Welfare and~~
31 ~~Institutions Code, if the conditions allowing temporary custody~~
32 ~~without warrant are met.~~

33 (b) Among the circumstances that may be considered in
34 determining whether a person loiters with the intent to commit
35 prostitution are that the person:

36 (1) Repeatedly beckons to, stops, engages in conversations with,
37 or attempts to stop or engage in conversations with passersby,
38 indicative of soliciting for prostitution.

39 (2) Repeatedly stops or attempts to stop motor vehicles by
40 hailing the drivers, waving arms, or making any other bodily

1 gestures, or engages or attempts to engage the drivers or passengers
2 of the motor vehicles in conversation, indicative of soliciting for
3 prostitution.

4 (3) Has been convicted of violating this section, subdivision (a)
5 or (b) of Section 647, or any other offense relating to or involving
6 prostitution, within five years of the arrest under this section.

7 (4) Circles an area in a motor vehicle and repeatedly beckons
8 to, contacts, or attempts to contact or stop pedestrians or other
9 motorists, indicative of soliciting for prostitution.

10 (5) Has engaged, within six months prior to the arrest under this
11 section, in any behavior described in this subdivision, with the
12 exception of paragraph (3), or in any other behavior indicative of
13 prostitution activity.

14 (c) The list of circumstances set forth in subdivision (b) is not
15 exclusive. The circumstances set forth in subdivision (b) should
16 be considered particularly salient if they occur in an area that is
17 known for prostitution activity. Any other relevant circumstances
18 may be considered in determining whether a person has the
19 requisite intent. Moreover, no one circumstance or combination
20 of circumstances is in itself determinative of intent. Intent must
21 be determined based on an evaluation of the particular
22 circumstances of each case.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.